



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

INSANITY AND DIVORCE.¹

ALFRED GORDON.²

The problem of insanity and divorce is one of such vast importance from a social standpoint that it deserves full discussion in medical and legal circles. For the solution of this problem the alienist is indispensable. Whether he wishes it or not, the legislator must appeal in such matters to those who daily come in contact with the moral and mental anguish and suffering of unfortunate married men and women.

A legal separation of the two who had contracted marriage may be viewed from a purely sentimental standpoint or from a social point of view. The first is held by those who believe that insanity should be considered on the same ground as any other disease, that both contracting parties owe each other mutual assistance, that one should support the other no matter how painful the consequences of the disease may be, that divorce should therefore not be granted in view of the fact that all the inconveniences resulting from the mental disease cannot possibly have such an offensive character as to deserve dissolution of the marital bond.

The other point of view concerning insanity and divorce is not based on sentiment, but on ideas which have for their object the welfare of society as well as of its component individuals.

Insanity is certainly a disease. A disease that develops after marriage should not be a reason for separation. There are many maladies other than insanity that make conjugal life one of suffering and almost an impossibility. There are other diseases that are repugnant, incurable, but they cannot be considered causes for divorce. A disease must form a part of the conjugal risk. Mental disease alters or abolishes the normal personality, and therein precisely lies the fundamental difference between it and other disorders.

Marriage presupposes common interest especially from a mental standpoint. Affection and devotion are given to each other because each is capable of responding to the other. When the mentality of one of them becomes disturbed, his individuality is lost; it either becomes automatic or a new personality appears; the former personality

¹Read at the annual meeting of the Institute of Criminal Law and Criminology, Washington, D. C., Oct. 23, 1914.

²Dr. Gordon is a practising alienist and neurologist in Philadelphia, author of numerous articles; among others, "Prophylactic, Administrative and Medico-Legal Aspects of Alcoholism." This JOURNAL, Vol. IV, No. 6.

INSANITY AND DIVORCE

that contracted marriage is no more in existence. Consequently mental derangement *per se* is a dissolution of marriage. A distinction should be made between mental affections which are amenable to treatment and therefore curable, and those that are incurable. In the first case the personality of the individual is but temporarily altered. In such cases divorce would be an injustice. But when the intellectual and moral personality of the individual has disappeared without any hope of return to normal conditions, what should be the proper judicial attitude?

Before answering this important question, let us first briefly view the legislative acts in various European countries and in the individual states of the Union. In 1910 the new Civil Code of Germany generalized the various legal dispositions which existed in various forms in the individual states of that country, and admitted divorce in cases of insanity. (*Psychiatrisch-neurologische Wochenschrift*, article 1569. Marhold-Halle). The new law says: "Divorce may be granted when insanity exists during the married life for at least 3 years, when it reaches such a degree that common mental interest ceases, and when all expectations for recovery are given up." It makes, however, a provision that the obligations of maintenance of the insane person must be kept up by the person who obtained the divorce. This clause is highly moral and humanitarian, and it prevents at the same time the possibility of another motive in request for divorce, namely avoidance of supplying for the needs of the insane married person. So constructed, the law cannot raise serious objections.

Switzerland adopted in 1874 a federal law according to which insanity is placed among other causes of divorce, but it must be of three years standing, and must be declared incurable by experts. Besides, it must be shown that the conjugal life is difficult and impossible for the person that asks divorce, that the health, life, reputation, success in affairs, and future of the children are all jeopardized if life in common is continued.

In Sweden similar legislation has been in existence for the last hundred years. The royal decree says: "If one of the parties is suffering from a veritable mental affection which has lasted uninterruptedly at least three years, and if according to competent medical testimony there is no hope for recovery, the courts may grant divorce at request of the other party." It must be proven, also, that the mental affection had not been caused or aggravated by the conduct of the sane party. The term "veritable" does not impose any restriction, as all mental affections are "veritable." But the term, "uninterruptedly," includes at once the recurrent or the periodic psychoses, which fact

limits the application of the law only to a certain group of insanities, but not to all.

In Bulgaria the law of 1897 admits divorce, when one of the parties, after the marriage, is affected with dementia, idiocy, epilepsy or syphilis. In these cases divorce is permitted only after all the means have failed to bring on a recovery.

In the Republic of Ecuador, according to the law of 1902, insane individuals cannot marry, and insanity is a cause of annulment of marriage.

In Monaco the law of 1907 says: "When one of the parties is affected with insanity, epilepsy, alcoholic delirium or syphilis, divorce may be granted on the following conditions: (1) if the disease is incurable; (2) if the disease is of such a nature as to compromise the security and health of the other party or of the children born or to be born; (3) if the disease has lasted three years; (4) if the attacks of epilepsy or of alcoholic delirium are frequent."

It is evident that these provisions give full protection to the family, and prevent procreation of children with an undesirable inheritance.

In Portugal, the law of 1910 permits divorce for cause of incurable mental derangement, which has been in existence three years.

Germany, Sweden, Switzerland, Monaco, Bulgaria and Portugal seem to be the only European countries which have accepted the principle of insanity as a sufficient cause for dissolution of the marriage bond. Protection of the sane members of the family is apparently of great concern. The sentimental point of view is ignored. The majority of them accept a minimum of three years as a test for curability or incurability of a mental affection. Some of the terms employed by the legislators who formulated the laws may justly lead to controversies, and litigation. From a psychiatric standpoint they are debatable and do not cover all forms of mental disorder. Nevertheless, the laws themselves tend to prove a decided progress in administrative and prophylactic measures when the security of society and race is in jeopardy.

Let us now turn our attention to what has been accomplished in this direction in our own country.

The following states have no provision whatsoever with regard to mental disorder as a cause for divorce: Texas, New Jersey, the Philippines.

In the following states only for intemperance in the use of alcoholic beverages does the law permit divorce, but actual mental diseases which not only incapacitate the individual, but render others in the

INSANITY AND DIVORCE

family insecure and create a possibility of engendering new lives which will be tainted, these the law does not mention: North Carolina, Illinois, Alabama, Arizona, Colorado, Connecticut, Kentucky, Louisiana, Michigan, Minnesota, Nevada, New Hampshire, Ohio and Rhode Island. Moreover in some of these states (N. H. and O.), a period of three years; in one (Ill.), of two years, in one (Minn.), one year, of continuous inebriety is necessary for obtaining divorce. In all other states, no limit is set as a condition of divorce.

In all other states of the Union, mental disturbances are mentioned as cause for divorce. Alcoholic intoxication is mentioned in some, and not in others. In South Carolina, where divorces are not allowed, annulment of marriage is permissible on the ground of "idiocy or lunacy."

We observe the same indefiniteness of thought and expression in the construction of the text of the law with regard to alcoholic intoxication as in the case of insanities. For example, in the state of Washington absolute divorce is permitted for cause of drunkenness, chronic mania or dementia; the last two conditions must have lasted ten years before divorce may be granted. In the first place, from a psychiatric standpoint it is unscientific to consider chronic mania and dementia as the only mental disorders which may be considered as insanities. By this provision all other psychoses are eliminated. In the next place, when a patient who is suffering from a mental disease has reached the phase of dementia, the condition is incurable. Then why wait ten years and condemn the sane party to great inconveniences and difficulties during such a long period of time? Another peculiar feature of the law is the term, "drunkenness." It is curious that no specification is made as to the degree and duration. Besides no protection is given either party, as on one hand the drinking person may be taken advantage of, and on the other hand, one party who is eager to get rid of the other, may intentionally absorb alcohol for the purpose of becoming and of being considered a drunkard.

In the provisions of some states (Wisconsin, Oregon, Oklahoma, Kansas), we find instead of the term, "insanity," the expression, "want of understanding." This is again inadequate from a psychiatric standpoint. There are periods in some forms of insanity when the understanding is good. In paranoia, for example, the understanding in many directions may be good, and still such an individual is not fit to cohabit with another person and bring children into the world.

In the state of New York partial divorce is granted when the conduct on the part of the defendant is such as to render it unsafe and improper for former to cohabit with another. Of course this provis-

ion includes insanity. But in cases of mild melancholia or of dementia of a stuporous state, a position may be taken by the guardians of the defendant that the diseased individual's condition is perfectly compatible with safety for others because nothing had previously occurred to justify any fear. The case consequently may be contested and divorce denied. Nevertheless, the individual's mentality is really affected.

In Idaho the provision of the law leads to embarrassment. It directs that absolute divorce be granted in cases of permanent insanity, but no divorce shall be granted on the ground of insanity unless the insane defendant shall have been regularly confined in an insane asylum for at least six years next preceding the commencement of the action for divorce. The question arises: how about the insane individuals who are kept in the homes of their immediate relatives? If a sojourn in an asylum is indispensable for obtaining divorce, the latter class of individuals are not provided for by the law.

In the laws of other states, the terms, "hopeless insanity," and "incurable insanity" are used. In the state of Pennsylvania hopeless insanity has been a cause of divorce since 1843 (Section 8, April 13). It was amended in 1905, but the substance of the original act remains the same. It is the experience of every alienist that in a number of cases it is impossible to tell at any period of the disease, even years after the onset, whether recovery will follow or not. This co-called "remission," or period of lucidity of mind, may be, as is frequently the case, considered as recovery. Yet the patient is only temporarily improved. These remissions may be multiplied during the patient's illness, which may last many years. Because of the remissions, expectations of total recovery are cherished by those who are unfamiliar with the subject and divorce is denied. In Pennsylvania the above law seems to be so formulated that an avenue for misinterpretations is left open even in cases of incurable insanity. After this law was passed by the Legislature in 1905, the Superior Court in 1907 found, by means of a hair splitting argument, a way of rejecting a decision of the Court of Common Pleas by which divorce was granted in a case pronounced incurable by psychiatric experts. (*Baughman v. Baughman*, 34 Superior Court, p. 271; 1907.)

The term, "idiocy," is mentioned as a ground for divorce in several states. If an individual is found to be an idiot, his idiocy could not have developed after marriage. The scientific conception of idiocy implies a mental state which exists from infancy, and therefore it is discoverable before as well as after marriage. If the legislators intend to protect either of the contracting parties against mental disor-

INSANITY AND DIVORCE

ders beside insanity, it would render greater service if protection were extended by them against mental deficiency in general. It stands to reason that an idiot is utterly unfit for cohabitation. But there is a large category of individuals suffering from obsessions, special fears, deficient will, deficient inhibition; there are hypochondriacs, individuals who possess an extraordinary instability of character, of disposition, of mentality; persons who are emotionally instable and impressionable. The number of such psychoneurotic individuals is legion. Persons with this special makeup are far more unfit for cohabitation than idiots. The lack of stability, especially characteristic of these individuals, renders the marital relations impossible; all associated with them are bound to suffer. From a psychiatric standpoint, psychoneurotic individuals are not insane in the strict sense of the word; they are borderland cases which have not yet crossed the line. As the law concerns only lunacy, divorce will be refused in cases of psychoneuroses, and yet from the standpoint of the welfare of society which assumes the welfare and happiness of each component member, the same party to the marriage contract is compelled to suffer indefinitely from cohabitation with the other psychoneurotic party.

Besides idiocy, there is a very large class of mental deficiency which is not mentioned in the provisions of the larger number of states. I wish to speak of various degrees of imbecility or feeble-mindedness, conditions which are not covered by the terms, idiocy and insanity. The unfitness of an imbecile or of a feeble-minded individual for conjugal life, the essential requirement of which is a common interest, is self-evident and still the law that saw fit to annul marriage in cases of idiocy or insanity did not make any provision for this class of individuals.

If divorce or annulment of marriage is to be granted at all on the ground of insanity, I believe that the following states have enacted the wisest law: California, Delaware, Tennessee, Utah, Virginia, West Virginia, Wyoming, Porto Rico, South Carolina, South Dakota, New Mexico, North Dakota, Massachusetts, Mississippi, Montana, Nebraska, Iowa, Maine, Hawaii. In these states the term, "insanity," evidently covers all forms of insanity irrespective of the intensity and character of the mental disorder. All possible controversies and misunderstandings are thus eliminated unless a court of justice has the power of declaring it unconstitutional, which has been done in Pennsylvania.

Georgia, Indiana and Kansas recognize as cause for divorce or for annulment of marriage, mental incapacity existing only at the time at which the marriage contract was made. But if insanity develops thereafter, the parties evidently cannot be separated.

This brief review of legal provisions in various countries is sufficient to prove that not one of them is liberal enough to cover all phases of dissolution of marriage for cause of insanity.

Let us consider now, briefly, the state of mentality characteristic of various classical psychoses and also their duration; both factors will perhaps enable us to draw conclusions with regard to desirability or non-desirability of rupture of the matrimonial bond.

Paranoia, which is characterized essentially by systematized delusions, mostly of persecutory character, is a mental malady of the gravest character, and presents, generally speaking, a most unfavorable prognosis. It usually develops in individuals with a degenerate make-up. Common interest cannot exist between two parties who have contracted marriage if one of them is suffering from paranoia. Remissions occur in paranoia. They are characterized by apparent lucidity of mind. In spite of such an improvement, the paranoiac tendency always exists, and never leaves the patient. A certain specific delusion may disappear for a period of time, but sooner or later another delusion of analogous nature will develop and take place of the former delusive idea or ideas. Otherwise paranoia is essentially an incurable disease.

Dementia praecox is another very serious mental disease which usually develops in youth, and in which the affective functions suffer first and most. Delusive ideas of various nature, hallucinations of all kinds, may or may not accompany the disease. A gradually developing quantitative and qualitative loss of mentality is the chief manifestation. The disease is of very long duration. As to complete recovery, it is exceedingly rare, if it ever occurs. Occasionally considerable improvement in a general way is observed, but even then the activity, intelligence and the affectivity are all restricted. In spite of great amelioration in some cases, recurrences are always to be expected.

Manic-depressive insanity is a mental affection characterized by alternating phases of morbid depression and exaltation. Each of the phases may last a variable time, but what is particularly important from the standpoint of our thesis is the fact that each attack may be followed by complete restoration of normal mentality. This lucid interval may last an indefinite time. In some cases it is very brief—days or weeks—in other cases it may last months and even years. The special feature of this malady is that in spite of the lucidity in the intervals, the patient is always threatened with an attack, as indeed in the majority of instances repetition of a depressive or exalted condition is the rule during the patient's lifetime. It should always be borne in mind that in some cases the intervallary lucidity is not always com-

INSANITY AND DIVORCE

plete. The prognosis therefore in such cases must be made guardedly.

Paresis is characterized essentially by a progressive enfeeblement of mental faculties. The disease commences usually in the most insidious manner. Memory and power of criticism both suffer early in disease. Sometimes the characteristic physical signs accompany the mental manifestations at the onset. The affection has for its anatomical substratum irreparable changes in the brain and in its membranes; also in the tracts, of fibers emanating from the brain. Besides, it is well established that syphilis is the original and direct cause of paresis. The affection is incurable. Remissions, or lucid intervals, are observed, but as a rule they are not of long duration. In the majority of cases the duration of paresis is from two to three years.

Melancholia is characterized by a gradual development of a painful emotional state with depression, to which delusional conceptions are added. Among the latter, the most frequent, are ideas of worthlessness and self-blame. A tendency to self-destruction is always present. Suicide is frequent among the victims of melancholia. In some cases this is preceded by homicide. The disease usually occurs during the period of involution. The duration is long; of two or three or more years. In the majority of cases dementia is the terminal stage. Recovery has been observed in a small percentage of cases, but repetition of an attack of melancholia is a frequent observation.

Mental disturbances due to alcoholism deserve mention. The delirious and confusional states of acute alcoholism are well known. They are recoverable conditions. But in cases of recidivism, which is always to be feared in alcoholic intoxication, the mental state becomes very serious from the standpoint of the profound changes which alcohol is likely to produce. Chronic alcoholism leads to a gradually developing intellectual feebleness, viz., dementia. The prognosis is very unfavorable. Weakness of will power and energy, cloudy memory, loss of power of application to work, apathy, loss of sense of propriety, and finally, delusive ideas which are sometimes intensified by hallucinatory images—this is the mental status in chronic alcoholism. The evolution is progressive and the ultimate result is dementia.

In epilepsy there is usually complete lucidity of mind during the intervals. If, however, the epileptic attacks repeat themselves very frequently, a persistent change of personality may develop. Intellectual dullness is very conspicuous; the memory is weakened, conceptions are narrowed. Affective faculties also suffer. Patients have outbursts of anger and violence; they are egotistic and brutal. This group of symptoms constitutes the so-called "epileptic dementia." The prognosis is unfavorable.

The few typical examples of mental affections just described are presented here to demonstrate the extreme seriousness of the situation in which one party to the marriage contract is placed when the other is mentally affected. There are many other varieties of mental disorder which constitute mixed groups or unclassifiable affections. There are other mental conditions which technically could not be called insanities in the strict sense of the term, but the individuals thus affected are future candidates; they have not yet crossed the borderline; they are predisposed individuals. The instability of their character and disposition, eccentricities, abnormal tendencies, etc. (see above), render their married life most unhappy. In such cases the common interest which is the most essential requisite of married life is entirely wanting. The same remarks are applicable to the large group of mentally deficient individuals.

Conclusions—Divorce is a condition to be deplored. But the complexity of modern life and considerations of social order render it sometimes unavoidable. Psychiatry has a certain relationship to the question of divorce, because in a number of cases the conflict between the contracting parties is the consequence of a mental disorder. It is, of course, desirable in every case to avoid matrimony with a person who presents a degenerate, or neuropathic make-up, or suspicious hereditary tendencies. But once the marriage contract is concluded and mental disturbances subsequently develop, a grave question arises: should the matrimonial bond be dissolved? Is it an act of social justice to condemn a party of marriageable age to celibacy? Is it fair to permit procreation by individuals who will inherit the morbid tendency toward mental affections or mental deficiency and thus throw a heavy burden on the community? It is incontestable that a disease, generally speaking, should not figure among the causes of divorce. But when personal safety and life are concerned, legal separation is logically indicated. Cohabitation with an insane or otherwise mentally defective individual, not only places the life of the sane party in jeopardy, but what is more important from a social standpoint, it facilitates procreation of tainted beings.

With the exception of the acute cases, the chronic forms of mental diseases are, generally speaking, incurable. No alienist can tell with any degree of precision how long any given malady will last. Even in the so-called curable psychoses, the number of which is very limited, one cannot predict their duration.

An attack of delirium or confusion following an infectious disease usually disappears without leaving any trace. The same occurs in an occasional alcoholic intoxication. Divorce in such cases is out of the

INSANITY AND DIVORCE

question. If, however, alcoholic delirium or confusion is repeated, there is a great possibility that the individual will suffer from chronic alcoholic intoxication, and that his mentality will undergo deterioration. The common interest which is essential in married life, can no more exist, and continuous cohabitation is an injustice to the sane person.

Chronic alcoholic individuals, paretics, paranoiacs and persons suffering from the other incurable mental affections enumerated above, threaten the race with deterioration by transmitting to the offspring profound degenerative stigmata. Qualitative as well as quantitative depopulation is bound to follow.

Approximately 80 per cent or 90 per cent of mental diseases are incurable. These individuals are a source of constant danger to their surroundings. What shall a woman do if her husband is incurably insane? If she has children, should she not be permitted to remarry, and by these means assure their existence? If the mother is insane, the husband can no more rely on her to bring up the children. Should he not be permitted to place them in the hands of another woman who will legally administer to them motherly care and attention?

A great many persons are opposed to divorce for religious or sentimental reasons. Fortunately the appreciation of marriage in modern society is acquiring more and more a social importance. It is considered as a civil treaty, concluded for the purpose of a carrying out mutual rights and duties. These mutual obligations are unquestionably sacred, but when they cannot be kept up because one of the contracting parties is no more capable of appreciating the importance of the great position, justice demands protection of the other party whose mentality is capable of thinking, feeling and acting normally. Divorce is evidently a step forward in cases of impossible married life. It is a measure of defense for the sane, and of preservation of society and of the race against procreation of the mentally abnormal. In the interest of the nation and the race, divorce should be permitted in cases of mental disorders.

I have shown above the inadequacy of the legal provisions of various states in this country. I have emphasized the fact, that wherever the law considers insanity as a cause of divorce, it is so formulated that it does not cover all forms and varieties of mental disorder, and leaves, therefore, possibilities for contest and litigation. If divorce is to be granted on this basis, the legal provision should be so formulated that it will affect not only the absolutely incurable psychoses, but also all varieties of mental deficiencies and abnormalities which, from a psychiatric standpoint, render common marital life an impossibility.

The jurist and the psychiatrist are to be intrusted with the formulation of such a law. In preparing this important project for legislative action they must bear in mind the findings of the science of psychiatry. The curability and incurability of various mental disorders is very well established. Assuming that an approximate durability of a given psychosis cannot be ascertained for the purpose of including it in the list of affections that justify divorce, the latter should nevertheless be granted, and for this reason: experience teaches that serious forms of insanity usually develop in individuals of a degenerate make-up. If they are considered, for practical purposes, as having recovered, there is no guarantee that a recurrence in one or another form will not take place. Besides, they should not be placed in a position in which they may procreate.

Lucid intervals in the course of mental affections are misleading and should not be taken as recoveries. Otherwise the individual will be allowed to cohabit and thus procreation will be facilitated.

Paresis is an incurable disease, and no given period of time should be required as a test of curability.

In working out a law which will do justice to both parties of the marriage contract as well as to the community, a very detailed analysis of every possible mental disorder should be undertaken. The assistance of psychiatric science is here of prime importance. The study of this question must be undertaken with a scientific sang-froid. Justice, but not sentimentality must be the guide in this endeavor.